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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 3, 2001

PETITION OF

MICHAEL H. DITTON

CASE NO. PUC990176

To investigate Bell  
Atlantic-Virginia, Inc.

FINAL ORDER

On October 7, 1999, Michael H. Ditton ("Mr. Ditton" or "Petitioner") filed a Verified Petition for Redress and Relief ("Petition") with the State Corporation Commission ("Commission") requesting that it investigate Bell Atlantic-Virginia, Inc., now known as Verizon-Virginia, Inc. ("Verizon"), and order Verizon to provide Mr. Ditton with adequate and reliable telephone service. Specifically, Mr. Ditton alleged that Verizon: (i) failed to provide adequate telephone service; (ii) acquiesced to illegal use of his telephone lines by another; (iii) lied concerning the quality and security of his service; (iv) obstructed justice; (v) interfered with and obstructed his telephone line messages; (vi) refused to enforce wiretapping law; (vii) failed to enforce its privacy policies; and (viii) failed to protect him against wiretapping, harassing, and annoying telephone calls. Mr. Ditton requested, among other things, that the Commission investigate Verizon and take all appropriate actions to enforce its regulations, rules, and

orders, including suspending Verizon's license to furnish telephone service in Virginia.

On October 19, 1999, Mr. Ditton filed a Verified Petition and Motion for Injunctive Relief ("Motion"). In his Motion, Mr. Ditton asked the Commission to enjoin Verizon from terminating his telephone service. In response, the Staff of the Commission ("Staff") took steps to ensure that Mr. Ditton's telephone service was not disconnected during the pending investigation and attempted to resolve the matter informally.

On December 1, 1999, Verizon filed its Answer in which it essentially denied the allegations made by Mr. Ditton. On December 21, 1999, Mr. Ditton filed a "Replication to Respondent's Answer."

On March 10, 2000, the Staff filed an informal report outlining the results of Staff's investigation and testing of the telephone service provided by Verizon to Mr. Ditton. In the report, the Staff concluded that "there is nothing that Mr. Ditton has experienced with his computer/fax/telephone/internet equipment working on a single telephone line that most users under similar circumstances haven't also experienced on a routine basis."<sup>1</sup>

On March 27, 2000, Mr. Ditton filed a reply to Staff's informal report. In his reply, Mr. Ditton maintained that Staff's report failed to adequately describe and address the

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<sup>1</sup> Staff Report, Attachment 2, page 4.

matters alleged in his Petition. Mr. Ditton requested that the Commission docket his complaint as a formal proceeding. On May 2, 2000, the Commission issued its Procedural Order in which it formally docketed this matter and appointed a Hearing Examiner to conduct all further proceedings.

Pursuant to Hearing Examiner's Ruling dated May 31, 2000, Mr. Ditton's Petition was scheduled for telephonic hearing on July 26, 2000, and a procedural schedule was established for the filing of prepared testimony and exhibits. On June 15, 2000, Mr. Ditton filed a Request for Extension of Time and Postponement, seeking additional time to prepare for the hearing. By a Hearing Examiner's Ruling dated June 20, 2000, this matter was continued generally.

On June 26, 2000, Verizon moved to dismiss or, in the alternative, to suspend discovery. By Hearing Examiner's Ruling dated June 28, 2000, Verizon's motion to dismiss was denied and discovery was suspended until the establishment of a new procedural schedule. On November 13, 2000, Mr. Ditton requested that the Commission proceed with this matter and establish a new procedural schedule. A Hearing Examiner's Ruling dated November 21, 2000, established a new procedural schedule, which, among other things, scheduled a telephonic hearing for February 21, 2001.

On February 21, 2001, a hearing was convened at 11:00 a.m. in the Commission's 11<sup>th</sup> Floor conference room. Mr. Ditton

appeared *pro se* and attended telephonically from Bozeman, Montana. The Hearing Examiner heard evidence primarily on Mr. Ditton's complaints of inadequate service from Verizon and both Verizon's and the Staff's efforts to investigate and resolve the issues between the parties.

On June 1, 2001, the Hearing Examiner filed his Report. In the Report, the Hearing Examiner found that the case posed three factual issues: (1) whether Verizon provided Mr. Ditton with reasonably adequate service and facilities; (2) whether anyone interfered with or intercepted Mr. Ditton's telecommunications from facilities provided by Verizon; and (3) if someone did interfere with or intercept Mr. Ditton's telecommunications from facilities provided by Verizon, whether Verizon allowed, permitted, or covered up such interference or interception. The Hearing Examiner concluded that, with regard to the first issue, Verizon satisfied its statutory requirement "to furnish reasonably adequate service and facilities."<sup>2</sup> With regard to the second and third issues, the Hearing Examiner found that there were no illegal wiretaps on Mr. Ditton's telephone line and, consequently, no conspiracy or cover-up on the part of Verizon. Therefore, the Hearing Examiner recommended that the Commission adopt his findings and dismiss Mr. Ditton's Petition with prejudice.

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<sup>2</sup> § 56-234 of the Code of Virginia.

On June 18, 2001, Mr. Ditton filed objections to the Hearing Examiner's Report. Petitioner objects to the finding and recommendations of the Hearing Examiner, and contends that (1) the report is factually and legally erroneous and is a failure to act in accordance with SCC Rules and state law, and (2) the report and the Hearing Examiner's failure to compel discovery is arbitrary and capricious administrative action, lacks a rational basis, is contrary to law, and is not supported by substantial evidence in the record and is an abuse of discretion. Mr. Ditton asserts that the Commission should order a re-hearing of the matter after compelling Verizon to respond fully, completely and accurately to Petitioners' discovery requests. Mr. Ditton also states that the Staff should be ordered to investigate thoroughly Petitioner's allegations. Finally, Petitioner argues that the Hearing Examiner should be replaced or ordered to perform his duties impartially and to fully inquire into Petitioner's allegations and the charges set forth in the Petition, and render a fair and impartial report.

NOW THE COMMISSION, upon consideration of the record, the Hearing Examiner's Report, Mr. Ditton's objections to the Report, and applicable statutes, is of the opinion and finds that the Hearing Examiner's findings and recommendations are supported by the record in this proceeding and should be adopted. We are of the opinion that a thorough investigation has been completed, that the Hearing Examiner considered all of

the evidence before him, and that there is no evidence in the record before us to support Mr. Ditton's allegations.

Accordingly, IT IS ORDERED THAT:

(1) The findings of the Hearing Examiner's Report filed on June 1, 2001, are hereby adopted.

(2) Mr. Ditton's Petition is hereby dismissed with prejudice.

(3) There being nothing further to come before the Commission in this matter, this case is hereby dismissed and the papers filed herein placed in the file for ended causes.